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In the Supreme Court of the United States

OCTOBER TERM, 1944.

No. 160

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
A Corporation,
Petitioner,

vs.

G. W. BURLEY, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

MOTION OF BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS OF AMERICA AND SWITCHMEN'S UNION OF NORTH AMERICA FOR LEAVE TO FILE BRIEF AS AMICI CURIAE,

and

BRIEF OF AMICI CURIAE.

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MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

The Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors of America, and Switchmen's Union of North America, acting through their attorneys, the undersigned, hereby move the Court for leave to file a brief as *amici curiae* in the above entitled action for reasons hereinafter stated. Consent to file this brief has been received from the petitioner, but denied by the respondents.

Request is made for leave to appear for oral argument.

Typewritten copies of this motion and brief were forwarded by registered mail to attorneys for the petitioner and the respondents, respectively, on the 27th day of November, 1945.

INTEREST OF MOVING PARTIES.

The Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors of America, and Switchmen's Union of North America are three of the five train-service organizations (the other two being the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen) representing, for the purposes of the Railway Labor Act, virtually all of the engineers, firemen, conductors, trainmen, switchmen, hostlers and hostler helpers employed by the railroads of the country engaged in interstate commerce. Substantial portions of the efforts and resources of these organizations are devoted to the continuous task of representing individual, or groups of, employees in the presentation and settlement of their grievances against the carrier-employers by the process of bargaining, and the use of other means of settlement provided by the Railway Labor Act. The opinion of the Court rendered in the instant case will, if allowed to stand, compel changes to be made in the long-established methods used by these representatives in the handling of grievances. These changes will add to the burden of representation; there will be confusion and uncertainty as to the right of the carriers' and the employees' representatives to settle grievances, and the process of arriving at settlements will be prolonged and made increasingly difficult. Being thus immediately affected, both with respect to the claims and grievances now in the process of adjustment as well as those to be handled in the future, by the opinion rendered in the instant case if it is allowed to stand, these organizations ask that they be allowed to express their views by the accompanying brief and by oral argument before being concluded in the premises by the ultimate disposition of this case.

The Railway Labor Executives' Association, in which organization the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors of America

and the Switchmen's Union of North America hold membership, has participated in this hearing as *amicus curiae* by filing a brief in suport of the petition for rehearing. If the views expressed in the Association's brief are understood by this Court to be that the Railway Labor Act contemplates, allegedly consistent with the established practice in the industry prior to the enactment of the Railway Labor Act, that the adjustment of grievances involving the interpretation and application of collective bargaining agreements shall be vested exclusively in the bargaining representative of the craft or class, so as to deprive the individual employee of the right to assert and settle his grievance in person or through a personally chosen representative, then such views are completely at variance with the facts and with the views held by the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors of America and the Switchmen's Union of North America. The facts as known by these organizations and their views respecting the procedure for handling grievances incorporated by the Congress into the Railway Labor Act are set forth in the accompanying brief.

Dated at Cleveland, Ohio, this 27th day of November, 1945.

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Cleveland 15, Ohio,

V. C. SHUTTLEWORTH,
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Cedar Rapids, Iowa.

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BRIEF OF AMICI CURIAE.

STATEMENT OF THE CASE.

Certain of the facts of this case set forth in the reported opinion of the Court[1] deserve to be emphasized by restatement here because of their bearing upon the argument that follows.

The respondents are ten employees of the Elgin, Joliet & Eastern Railway who are members of the Brotherhood of Railroad Trainmen, the designated representative of certain of the carrier's employees for the purposes of the Railway Labor Act. The respondents and a number of other employees were called to work by the carrier at times not consistent with Article 6 of the collective bargaining agreement. Article 6, the employees claimed, governed their starting time, but this the carrier disputed. Numerous complaints were made by the respondents through the

[1] *Elgin, J. & E. Ry. Co. v. Burley*, 65 S. Ct. 1282.

Brotherhood and time slips were filed. In addition to this, the respondents authorized the Brotherhood to submit their complaints to the National Railroad Adjustment Board. This was done. Some time afterward the carrier and the Brotherhood met and came to agreement, settling some sixty-one grievances, including the claims based upon the alleged violations of Article 6. The result of this settlement was an agreement that Article 6 would, for the ensuing ninety days, be observed by the carrier in calling the respondents and other employees to work. If, at the end of that trial period, either the carrier or the employees were dissatisfied, a new schedule of starting time would be worked out. As a part of the settlement it was, in effect, agreed that the time claims that had been filed were thereby disposed of and no further claims based on the violation of Article 6 would be filed by the Brotherhood. Later, and in apparent repudiation of this settlement, the individual time claims of the respondents were filed with the National Railroad Adjustment Board against the carrier. These were ruled on adversely by the Board. The respondents now seek to enforce their claims in the courts. And this Court has indicated an intention to permit this to be done, as we understand it, if it be shown that the Brotherhood did not possess at the time of settlement a clearly articulated authorization from the respondents to settle their time claims at the same time and as a part of the settlement of their dispute with the carrier concerning the applicability of Article 6 to them.

ARGUMENT.

At the outset we wish to state with emphasis that we are opposed to the thesis that the bargaining representative of the craft or class is, or should be, vested with exclusive authority to settle grievances of the employees comprising the craft or class, growing out of the interpretation and application of the collective bargaining agree-

ment. The right to personally handle and settle a grievance, or to personally choose a representative to accomplish this purpose, must be preserved to the employee. *It does not necessarily follow, however, that if the right of the employee to handle his grievance is recognized, then the concomitants of a common law relationship of principal and agent must be found to exist between the employee and the railway labor organization before the latter can assume to settle the grievance with the carrier.* The grievances that arise from the interpretation and application of collective bargaining agreements on the railroads are multitudinous. The manner in which they are customarily handled is a long-established and well known procedure within the industry. The vast majority of grievances have in the past been handled and settled by the Brotherhoods acting for the employees. A recognition by the Court of the practical necessities of the situation will point the way to a result that will preserve to the employee the right of control of the disposition of his grievance, and will at the same time not saddle the normal process of grievance adjustment with the burdensome qualities of common law agency relationship. Of this, more will be said later.

The Right of the Employee to Choose His Own Representative for the Settlement of Grievances Was an Established Right Among the Transportation Employees Prior to the Enactment of the Railway Labor Act.

Any assertion that the settlement of grievances held by train-service employees has in the past been vested exclusively in the bargaining representative of the craft or class is simply not consistent with the facts. The one instance known to the undersigned in which this question has been before the courts was in *General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Southern Pacific Company*, 320 U. S. 338. The facts of record in that case abundantly confirm the statement just made.

The origin of the *Southern Pacific* case lay in two disputes, one between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, and the other between the Order of Railway Conductors of America and the Brotherhood of Railroad Trainmen. The Transcript of Record of that case in this Court reveals[2] that the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, on May 17, 1913, entered into an agreement known as the Chicago Joint Agreement for the purpose of resolving the major differences between the two organizations growing out of their representation of the engineers' and firemen's crafts employed on the railroads of the country engaged in interstate commerce. Among the provisions of this agreement was the following:

"ARTICLE 7.

(a) The right of any engineer, fireman or hostler to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded."

By this agreement the fact was recognized and established for the future that an individual employee was free to choose the organization of which he was a member, whether it be the Brotherhood of Locomotive Engineers or Brotherhood of Locomotive Firemen and Enginemen, to handle his grievances, subject to the condition that any settlement of a grievance must be consistent with the "recognized interpretation" put upon the collective bargaining agreement by whichever organization negotiated

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[2] R. 669-725. See explanation of Chicago Joint Agreement, R. 198-203; also see Transcript of Record, pp. 231-256, to same effect in *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323.

it. There could hardly be a clearer repudiation of the thesis that representation for the purpose of settling grievances was, prior to the enactment of the Railway Labor Act, vested exclusively in the bargaining representative of the craft or class than this declaration by the two Brotherhoods parties to the Chicago Joint Agreement. The Agreement remained in effect, and was expanded by two supplementary agreements, until October 1, 1927.

The dispute on the Southern Pacific Railroad involving the four Brotherhoods was submitted to an Emergency Board appointed by the President under Section 10 of the Railway Labor Act on April 17, 1937. The Board, in its report to the President, made the following statement as its finding concerning the practice of the Order of Railway Conductors of America and the Brotherhood of Railroad Trainmen in recognizing the right of individual conductors and trainmen to choose their personal representatives for the purpose of settling grievances:

> "So far as the documents involved are concerned, the principal difference between this case and Case No. 1 (Brotherhood of Locomotive Engineers v. Brotherhood of Locomotive Firemen and Enginemen), is that the Brotherhood of Railroad Trainmen in its Agreement with the Carrier has made no special provision for representation where a member of its Order is operating as a conductor, instead of as a brakeman or other trainman. However, since for many years members of the Trainmen's Organization, acting as conductors, have been conceded by the Order of Railway Conductors the right to be represented throughout by the Trainmen's Organization, in disputes involving the Conductors' Agreement, it seems clear that until the present dispute arose, this was the agreed and accepted policy of both Organizations. This right as shown by case No. 1 is in accordance with the provisions of the Railway Labor Act."[3]

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[3] *Southern Pacific* case, R. 744.

The United States District Court before which the dispute between the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen in the *Southern Pacific* case was tried (in which action the Southern Pacific Company was defendant) made the following significant finding of fact:[4]

"7 (a) In the operation of Pacific Lines, there arise individual claims and grievance cases, involving disputes between individual employees and defendant as to their respective rights under the agreements referred to in paragraph 5 and as to matters not covered by said agreements. It is and ever since long prior to the enactment of the Railway Labor Act has been the custom for an engineman who has an individual claim arising out of any such dispute, and who desires the Firemen's or Engineers' Brotherhood (or other representative) to represent him in presenting and handling to conclusion the claim against defendant, to select whichever brotherhood (or other representative) he desires. In such cases a claimant engineman is not and never has been required to choose as his representative the brotherhood or labor organization selected as a representative for collective bargaining by the majority of employees in the service in which the claimant was employed when the dispute arose.

"(b) The usual manner of handling such individual claims is and since long prior to the enactment of the Railway Labor Act continuously has been for the claimant to select as his representative the brotherhood of which he is a member, regardless of the craft or class in which he was employed when the dispute arose. In a limited number of cases, the claimant presents or has presented his claim to defendant directly and without representation, or he selects or has selected another organization or individual to represent him. Such presentation and handling to conclusion of a claim by the individual

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[4] *Southern Pacific* case, R. 48-50. These findings were not disturbed by the Circuit Court of Appeals, 132 F. 2d 194.

directly concerned, or a representative other than the brotherhood to which claimant belongs, is within the scope and meaning of the 'usual manner of handling.' When a claim, after initial presentation to defendant, is handled further with defendant's officers, or subsequently presented to the National Railroad Adjustment Board, it is usually handled by the same brotherhood (or other representative selected by the claimant) as presented the claim to defendant.

"(c) On almost every railroad in the United States, all individual claims, grievances and disputes of enginemen against their employers, whether within the scope of a collective bargaining agreement or not, and whether involving rights arising from such agreement or not, are and from a date long prior to the passage of the Railway Labor Act have been handled in the manner hereinabove set forth as applicable to defendant's Pacific Lines, and such was at all said times and is now the usual manner of handling such claims."

An additional fact revealed by the *Southern Pacific* record is that the Brotherhood of Locomotive Firemen and Enginemen has never assumed to represent a Brotherhood member, or a non-member, in the handling of a dispute if the employee did not desire the Brotherhood to handle the dispute.[5]

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[5] Testimony by Mr. D. B. Robertson, President of the Brotherhood of Locomotive Firemen and Enginemen, on examination by Mr. Donald Richberg, R. 207-208:

"Mr. Richberg:

Q. Turning now to the question of representation, Mr. Robertson, has your Brotherhood ever claimed the right to represent a member or a non-member having a grievance dispute against the wishes of the employee who had the grievance?

A. No, sir.

Q. Has your Brotherhood ever claimed the right to control the settlement of a grievance of a member or non-member who did not wish to be represented by your Brotherhood in the settlement of his grievance?

A. No, sir."

The record in the *Southern Pacific* case discloses that the thesis of exclusive representation has never been an actuality in the handling of grievances of the train-service employees. The record correctly reveals that grievances have customarily been handled and settled by a Brotherhood selected by the employee as his representative, whether the employee be a member or non-member of that Brotherhood and regardless of whether the Brotherhood chosen was the bargaining representative of the craft or class to which the employee belonged. There has been no practice or custom of denying to an employee the privilege of personally handling his grievance to a conclusion, or choosing any representative he wished, assuming he indicated a desire to exercise that privilege.

The Railway Labor Act contains no language expressly declaring an intention on the part of Congress to change the established procedure in the industry for the handling of grievances. As a matter of fact, quite the opposite purpose is indicated by the adoption of the language of § 3 First (i) of the Act reading,[6]

> "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; * * *."

We venture to suggest that in view of the freedom enjoyed by employees since long prior to the enactment of the first Railway Labor Act (44 Stat. 577-587) in selecting representatives for the handling of grievances, and in view of the declared intention of Congress that the established method of handling grievances was to be continued unal-

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[6] 45 U. S. C. § 153, First (i).

tered under the Railway Labor Act, no argument or purpose that can be brought forth should possess sufficient inducement to impel this Court to the conclusion that the Railway Labor Act vests in the representative of the craft or class exclusive authority to settle the grievances of employees comprising the craft or class. If, indeed, there exists any argument or purpose capable of tempting the Court to the adoption of such a result, the temptation must surely be short-lived when thought is given to the constitutionality of such a result. We refrain from the development of this issue for in the majority opinion the Court clearly acknowledges its awareness of the probable invalidity of an attempt by Congress to deprive an employee of control over the settlement of his claim against the carrier. The minority opinion lends no support to the thought that the Court would be in disagreement on this point.

The Decision of the Court Regarding the Authority of a Representative to Settle Grievances Should Sustain the Established Practices of the Industry.

The Court, in searching the relationship between the ten respondents and the Brotherhood of Railroad Trainmen for evidence of a grant of authority from the respondents to the Brotherhood to settle their claims, was dominated, one might fairly say, by an ultra-conservative view. The Court pondered the fact that the respondents had filed their claims with the Brotherhood for lodgment against the carrier and had approved their submission by the Brotherhood to the National Railroad Adjustment Board. But these actions were rejected by the Court as insufficiently indicative of a grant of authority to the Brotherhood to settle the respondents' claims. The Court then inquired whether the collective bargaining agreement could conceivably be the source of authority to the representative to settle the respondents' grievances. It concluded that this could

not be permitted, for otherwise it would lie within the power of the collective bargaining representative to create its own authority through agreement with the carrier. The rules and regulations of the Brotherhood were also examined. Among these was Rule 7 which provided that after a grievance was transmitted to the General Grievance Committee for handling, the Committee "shall have power to alter, amend, add to or strike out * * * any part or all of any complaint or claim submitted to the Committee, subject to appeal to the entire General Committee and/or Board of Appeals. A General Grievance Committee may authorize their chairman to handle all grievances received from local lodges with the management for settlement * * *." This grant of authority from the member to the Brotherhood was declared by the Court to be insufficient because the regulations failed to "unequivocally" authorize the Brotherhood to settle the member's grievances.

We are compelled to conclude from this treatment of the problem that the Court proposes to apply a common-law standard, designedly suitable to the relatively simple relationship of principal and agent, as the test of the authority of a railway labor organization to handle and settle the host of grievances which must be expeditiously and effectively disposed of if the Congressional enjoinment "to avoid any interruption to commerce or to the operation of any carrier engaged therein"[7] is to be accomplished.

We wish to respectfully suggest to the Court that the entertainment of this proposed view could be commended as reasonable only if the problem under consideration were weighed wholly detached from the realities of its environment. If a strait-jacket of legal restrictions is not to shackle the railway labor organizations in the performance of the services expected of them by the Congress and the country at large as outlined in the Railway Labor Act, the

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[7] 45 U. S. C. § 151 a(1).

mind of the Court must be accurately attuned to the practicalities of the problems faced by these representatives.

It is not possible in the present stage of this litigation for us to present facts and data portraying the frequency with which grievances arise in railroad operation, the protracted lengths to which negotiations must sometimes be carried in an effort to arrive at settlements with the carrier, and the extent to which personalities, underlying forces and objectives foreign to the immediate issues sometimes exercise a dominant role in the settlement of disputes between carriers and their employees. But a detailed record of such facts is not, we believe, essential to an appreciation by the Court of the problems of grievance settlement sufficient to avoid the establishment of a rule of law unsettling to the relationships of the industry. In lieu of such a record, the Court can take note of the fact that the National Mediation Board has promulgated the rule (revealed by the issues in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297), that all the employees of one craft or class employed on one entire railway system must be represented for contract bargaining purposes by a single representative. Since this representative normally handles the majority of the grievances arising within the craft or class being represented, it follows that one grievance committee and its chairman handle the grievances originating from hundreds, or, on the largest systems, thousands of employees. The Court may also note that for the five years, 1940-1944, (the period is selected at random) there were submitted to the National Railroad Adjustment Board 14,194 grievances. Of these, 8,277 were disposed of by the Board's decisions.[8] It is reasonable to assume that only a minor portion of the total number of grievances that develop, eventually find their way to the Adjustment Board.

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[8] Sixth, Seventh, Eighth, Ninth and Tenth Annual Reports of the National Mediation Board, including the Report of the National Railroad Adjustment Board.

Judging on the basis of numbers alone, the magnitude of the representatives' task is impressive. We suggest that in the light of this fact alone, glaringly evident appears the impracticableness of compelling the representative to first secure from each aggrieved employee a specific authorization of unqualified authority to settle his grievance, or, in the alternative, to secure the individual assent of each interested employee to the terms of a grievance settlement, before the carrier can assume to deal with the employees' representative as a responsible spokesman.

We respectfully urge this Court to not promulgate, in the course of deciding the instant case, a rule which will have the consequences just described.

We have tried to explain why we are utterly opposed to the opinion of the Court holding that the authority of a representative to handle and settle grievances is to be conditioned by the rules and principles definitive of the authority of a common law agent. The Court is being pressed by some advocates to adopt an equally extreme, but opposite, view in which all control over the settlement of grievances is denied the employee and vested exclusively in the contract bargaining representative of the craft or class of which the employee is a part. This result is believed to be, as we have also explained, equally impossible of acceptance, for it departs radically from the practices long followed in the industry; it is without substantial support in the terms of the Railway Labor Act; it is contrary to the opinions expressed by the sponsors of the Act, as revealed by the reports of the Congressional Committees,[9] and, foremost, it would transcend the powers of the Con-

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[9] Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, on H. R. 7650, 73d Cong., 2d Sess. Hearings before the Committee on Interstate Commerce, United States Senate, on S. 3266, 73d Cong., 2d Sess.

Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, on H. R. 7180, 69th Cong., 1st Sess. Hearings before the Committee on Interstate Commerce, United States Senate, on S. 2306, 69th Cong., 1st Sess.

gress in a manner proscribed by the Due Process Clause of the Fifth Amendment.

In lieu of both of these extreme positions, we propose to the Court a middle ground—one which preserves the principle of individual control over the settlement of grievances, but which also avoids obstructing the normal processes of settling grievances by collective bargaining. We propose that this Court hold that the established procedure in the handling of grievances reveals a sufficient grant of authority to the representative chosen by the employee to permit it to handle grievances to a conclusion, subject, however, to the right of the employee, exercised prior to the moment of settlement, to personally assume command of the grievance adjustment or to specify the terms of settlement.

The *sine qua non* of this procedure is the act of the employee in filing his claim or grievance with the Brotherhood for presentation to the carrier. Grievances normally begin their journey to settlement by the employee referring the matter for handling to the local officer of the Brotherhood of which he is a member. If the employee is not a member of any railway labor organization, he refers it to the organization of his choice. It then becomes the purpose of the organization, wielding such of its influence and power, or all of it, as need be, to secure from the carrier an agreement either that the practice complained of will cease, or that the claim will be honored by payment in whole or in part, or both, as the case may be. The process that follows is primary knowledge to employees.[10]

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[10] Mr. David B. Robertson, President of the Brotherhood of Locomotive Firemen and Enginemen, testifying in *General Committee v. Southern Pacific Company, supra*, on direct examination by Mr. Donald Richberg, explained the usual manner of handling grievances both before and after the adoption of the Railway Labor Act to be as follows:

"Q. With your familiarity, Mr. Robertson, with the practice on the railroads over a long period of years in the han-

(Continued on following page.)

An employee referring his grievance to a railway labor organization knows as a matter of fact, or should be understood to assume, that his grievance will be prosecuted by the organization to a conclusion, through whatever proceedings it must perforce be taken to effect a settlement. The organization's services having thus been enlisted, it normally proceeds to handle the grievance without doubt as to its authority. A carrier, being requested by a representative of its employees to meet for the purpose of settling grievances, ordinarily responds by treating with the representative without misgivings (it should be entitled to do this owing to the fact that the duty of bargaining with its employees is enjoined upon it by the Railway Labor Act) as to the fact of authorization from the employee to the representative to handle the grievances he purports to deal with.

(Footnote 10 continued.)

dling of grievance disputes, what is meant by 'the usual manner' in which disputes are handled? What is the usual manner in which such disputes are handled?

* * * * *

A. The usual manner of handling grievances today, if a man has a grievance he takes it to his local lodge—I am speaking now of the B. of L. F. & E.—takes it to his local lodge and files it. If the Lodge thinks he has a meritorious case, they refer it to the local chairman to handle it. He takes it up with the local official. On some railroads you are required to take it up with the mechanical department officials. On others you take it up with the operating department officials. The usual manner is, it is referred to the local committee by the man who has a grievance, referred to the local committee or lodge of which he is a member, and he takes it up and handles it with the local man, and when he has failed to reach a settlement, it is then referred to the general chairman. The general chairman then takes it up with the local officials. If he fails, he usually calls on the organization, the Grand Lodge of his organization, to send an officer, who then takes and handles it with the higher official, and if they fail to make a settlement, they invoke the other portions of the Act—mediation, arbitration, and in some instances the appointment of an Emergency Board. That is the usual manner." (Transcript of Record, *General Committee v. Southern Pacific Company*, pp. 203-205.)

The suggestion we make is that the Court attach to this existing mode of procedure a legal approbation which has not heretofore been required. This step becomes necessary now only as an escape from the alternate course of forcing upon the industry (by the decision in the instant case) methods of procedure not of the industry's choice, methods which promise to be destructive of the rights of the individual, or, in the alternative, burdensome to the representatives of the employees in the performance of the functions devolved upon them by the Railway Labor Act.

Our suggestion, in legal effect, is that a railway labor organization having received from an employee in the accustomed manner a grievance for handling, should be held to have thereby acquired adequate authority to handle the grievance to its ultimate settlement. And the carrier, having been requested by the organization to negotiate with it for the purpose of settling the grievance, may assume without further inquiry to deal with the representative as the authorized spokesman of the employee for the purpose of disposing of his grievance. At the same time the employee retains the right at any time prior to settlement to notify the carrier and the organization of his intention to resume control of his grievance, and thereafter handle it in person or through other representatives.

The Court, conceivably, could adopt the view that a labor organization presumptively possesses the requisite authority to handle and settle the grievances of the employees comprising the craft or class represented by it for contract bargaining purposes. Such a presumption might arise not by reason of any action on the part of the employee having the grievance, but solely by virtue of the fact that the organization is the statutory representative of the craft or class for the purposes of the Railway Labor Act. This presumption of authority would continue to the time of settlement, subject to the right of the interested

employee to take control of his own grievance adjustment. But this thesis harbors the embarrassing possibility of an employee discovering that his grievance had been settled by negotiation between the craft's representative and the carrier without the employee even being aware that his claim has been the subject of bargaining. This predicament cannot arise (barring bad faith on the part of the representative) when the right of a representative to handle a grievance is conditioned by the requirement that the authority to handle a grievance shall begin with, and is derived from, the act of filing or lodging the grievance with the labor organization for handling in the accustomed manner.

Another possible solution of the problem would be to hold that mere membership *per se* in a railway labor organization gives rise to the presumption that the organization has the authority to handle the grievances of its members. But this solution is capable of the same harsh consequences infecting the proposal discussed in the immediately preceding paragraph. The rules and regulations of some railway labor organizations are sufficiently inexplicit that they fail to apprise a member that the organization assumes on the basis of such rules, without further authorization, to handle the member's grievances to a conclusion. A member of such an organization would, if this thesis were adopted, risk discovering that a grievance held by him had been settled, although he had not filed it with the organization for handling and had, perhaps, altogether different intentions concerning its disposition.

Solution of this problem likely will be found in one of three possible conclusions, to-wit, (1) the conservative view proposed by the opinion of the Court; (2) the opposite extreme, of delegation by legislative (or judicial) fiat of exclusive authority to the craft representative; and (3) the moderate, practical view herein proposed. *We suggest to the Court that it not lose sight of the significant fact that*

the railroad brotherhoods have been handling the grievances of members and non-members throughout the industry for more than half a century, and in that time the question of the organizations' authority to settle grievances has not become a problem, either as between the members and the organization, or between the organizations and the carriers. If the subject is not whipped into vexatiousness by legislative or judicial interference with the established processes of grievance settlement, the Court and all concerned are entitled to look upon the action of the ten respondents in the present case as a singular instance of attempted repudiation of a settlement normally arrived at. The present case is, within our knowledge, and with the exception of *General Committee v. Southern Pacific Company*, the only occasion in which the courts have been called upon to resolve a dispute of this character arising within the railroad industry. The *Southern Pacific* case was itself the product of legislative interference, rather than being another illustration of strife between employees and labor organizations over the right of personal representation. The issue in the case was whether the Railway Labor Act had vested in the representative of a craft or class complete and exclusive control over all subjects of interest to the employees comprising the craft.

In conclusion, we respectfully submit that this Court should, as a practical result, confirm the right of the carrier to continue its long-established practice of dealing with the employee's personally chosen representative as the responsible spokesman for the employee in the matter of settling grievances. To the employee should be preserved the right to handle his grievances personally, or have them handled by the representative of his choice. And these respective rights should be reconciled by the decision that a railway labor organization, once having received from the employee a claim for handling in the usual manner, must be held to thereby have the author-

ity essential to handle the claim through the proced
contemplated by the Railway Labor Act, including
mission to mediation, arbitration or Adjustment Boa
proceedings, to its ultimate settlement, but recogniz
always the right of the employee to affirmatively resu
control of the claim prior to the time of its settlement
by appropriate notices to the organization and the carrier.

Respectfully submitted,

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